

## HOUSE BILL NO. 304

INTRODUCED BY G. CLANCY

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PROVISIONS RELATED TO ADOPTION AND REVIEW OF LOCAL SUBDIVISION REGULATIONS BY LOCAL GOVERNING BODIES AND LOCAL BOARDS OF HEALTH THAT ARE MORE STRINGENT THAN COMPARABLE STATE RULES OR GUIDELINES; ESTABLISHING ADDITIONAL CONDITIONS THAT MUST BE MET PRIOR TO ADOPTION OF THE REGULATIONS; REDUCING THE TIME ALLOWED FOR A GOVERNING BODY OR A LOCAL BOARD OF HEALTH TO ACT ON A PETITION TO REVIEW A REGULATION; ~~REDUCING THE MAXIMUM FEE THAT A GOVERNING BODY MAY CHARGE FOR FILING A PETITION FOR REVIEW OF A REGULATION;~~ ~~AMENDING SECTION~~ AMENDING SECTIONS 50-2-130 AND 76-3-511, MCA; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**SECTION 1. SECTION 50-2-130, MCA, IS AMENDED TO READ:**

**"50-2-130. Local regulations no more stringent than state ~~regulations~~ rules or guidelines.** (1) After April 14, 1995, except as provided in subsections (2) through (4) or unless required by state law, the local board may not adopt a ~~rule~~ regulation under 50-2-116(1)(i), (2)(k)(iii), or (2)(k)(v) that is applicable to subdivisions that is more stringent than the comparable state ~~regulations~~ rules or guidelines that address the same circumstances. The local board may incorporate by reference comparable state ~~regulations~~ rules or guidelines.

(2) The local board may adopt a ~~rule~~ regulation to implement 50-2-116(1)(i), (2)(k)(iii), or (2)(k)(v) that is applicable to subdivisions that is more stringent than comparable state ~~regulations~~ rules or guidelines only if the local board makes a written finding, after a public hearing and public comment and based on evidence in the record, that:

(a) the proposed local standard or requirement ~~protects~~ is necessary to protect public health or the environment; ~~and~~

(b) the applicable state rules or guidelines are inadequate to protect public health or the environment;

(b)(c) the proposed local board standard or requirement ~~to be imposed can~~ will mitigate harm to the public health or the environment as demonstrated by comparable information or peer-reviewed scientific studies, either of which relate directly to the specific local conditions that require the more stringent local standard or requirement; and

(d) the proposed local standard or requirement is achievable under current technology; and

(e) the cost to the regulated community to implement the proposed local standard or requirement is reasonable.

(3) The written finding must reference comparable information that relates to specific local conditions and peer-reviewed scientific studies contained in the record that forms the basis for the local board's conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed local standard or requirement.

(4) (a) A person affected by a ~~rule~~ regulation of the local board adopted after January 1, 1990, and before April 14, 1995, that that person believes to be more stringent than comparable state ~~regulations~~ rules or guidelines may petition the local board to review the ~~rule~~ regulation. If the local board determines that the ~~rule~~ regulation is more stringent than comparable state ~~regulations~~ rules or guidelines, the local board shall comply with this section by either revising the ~~rule~~ regulation to conform to the state ~~regulations~~ rules or guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed ~~12~~ 3 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged ~~rule~~ regulation. The local board may charge a petition filing fee in an amount not to exceed \$250.

(b) A person may also petition the local board for a ~~rule~~ regulation review under subsection (4)(a) if the local board adopts a ~~rule~~ regulation after January 1, 1990, in an area in which no state ~~regulations~~ rules or guidelines existed and the state government subsequently establishes comparable ~~regulations~~ rules or guidelines that are less stringent than the regulation previously adopted by the local board ~~rule~~."

**Section 2.** Section 76-3-511, MCA, is amended to read:

**"76-3-511. Local regulations no more stringent than state ~~regulations~~ rules or guidelines.** (1)

Except as provided in subsections (2) through (4) or unless required by state law, a governing body may not adopt a ~~rule~~ regulation under 76-3-501 or 76-3-504(6)(c) that is more stringent than the comparable

1 state ~~regulations~~ rules or guidelines that address the same circumstances. The governing body may  
2 incorporate by reference comparable state ~~regulations~~ rules or guidelines.

3 (2) The governing body may adopt a ~~rule~~ regulation to implement 76-3-501 or 76-3-504(6)(c) that  
4 is more stringent than comparable state ~~regulations~~ rules or guidelines only if the governing body makes  
5 a written finding, after a public hearing and public comment and based on evidence in the record, that:

6 (a) the proposed local standard or requirement ~~protects~~ is necessary to protect public health or  
7 the environment;

8 ~~(b) the comparable~~ APPLICABLE state rules or guidelines are inadequate to protect public health or  
9 the environment; and

10 ~~(b)(c) the proposed~~ local standard or requirement to be imposed can will mitigate harm to the  
11 public health or the environment as demonstrated by site-specific information and COMPARABLE INFORMATION  
12 OR peer-reviewed scientific studies relating directly to the, EITHER OF WHICH RELATE DIRECTLY TO THE SPECIFIC  
13 LOCAL conditions that require the more stringent local standard or requirement; and

14 (d) the proposed local standard or requirement is achievable under current technology; and

15 (e) the cost to the regulated community to implement the proposed local standard or requirement  
16 is not unreasonable REASONABLE.

17 (3) The written finding must reference ~~site-specific information~~ COMPARABLE INFORMATION THAT  
18 RELATES TO SPECIFIC LOCAL CONDITIONS and peer-reviewed scientific studies contained in the record that forms  
19 the basis for the governing body's conclusion. The written finding must also include information from the  
20 hearing record regarding the costs to the regulated community that are directly attributable to the proposed  
21 local standard or requirement.

22 (4) (a) A person affected by a ~~rule~~ regulation of the governing body adopted after January 1,  
23 1990, and before April 14, 1995, that that person believes to be more stringent than comparable state  
24 ~~regulations~~ rules or guidelines may petition the governing body to review the ~~rule~~ regulation. If the  
25 governing body determines that the ~~rule~~ regulation is more stringent than comparable state ~~regulations~~  
26 rules or guidelines, the governing body shall comply with this section by either revising the ~~rule~~ regulation  
27 to conform to the state ~~regulations~~ rules or guidelines or by making the written finding, as provided under  
28 subsection (2), within a reasonable period of time, not to exceed ~~12~~ 3 months after receiving the petition.  
29 A petition under this section does not relieve the petitioner of the duty to comply with the challenged ~~rule~~  
30 regulation. The governing body may charge a petition filing fee in an amount not to exceed ~~\$250~~ \$100

1 \$250.

2 (b) A person may also petition the governing body for a ~~rule~~ regulation review under subsection  
3 (4)(a) if the governing body adopts a ~~rule~~ regulation after January 1, 1990, in an area in which no state  
4 ~~regulations~~ rules or guidelines existed and the state government subsequently establishes comparable  
5 ~~regulations~~ rules or guidelines that are less stringent than the regulation previously adopted by the  
6 governing body ~~rule~~."

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8 NEW SECTION. Section 3. Applicability. The requirements for written findings provided for in  
9 [section 1(2) and (3)], amending 50-2-130, AND [SECTION 2(2) AND (3)], AMENDING 76-3-511, that must be  
10 made when the governing body adopts a regulation that is more stringent than comparable state rules or  
11 guidelines apply to a regulation that is adopted after [the effective date of this act].

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